

Remarks

Claims 1-24 and 26-45 are pending and stand rejected. Claim 24 has been amended. Applicants assert that the claims are now in condition for allowance as set forth more fully below.

Interview Summary

The undersigned participated in a telephone interview with the Examiner on March 2, 2005. During the interview, proposed amendment to claim 24 were initially discussed in relation to clarifying that the service provider concludes that xDSL service is down in order to generate a trouble ticket on the basis of detecting a dial-up connection from the user. Additionally, deficiencies in the Bransen, Hibbard, Tsoft, and Thurlow references were discussed relative to subject matter of the claims. Namely, it was discussed how none of the references prompt for user input about establish a dial-up on the basis of detecting a failed connection. Specifically, it was discussed that Thurlow only provides a prompt to use a secondary dial-up connection while the primary dial-up connection remains active such that the prompt is not provided in response to a failed connection. It was further discussed that Hibbard provides for automatically establishing a back-up dial-up connection upon detecting that the primary connection is down such that any combination based on Hibbard's system for a back-up dial-up fails to allow for user intervention to control whether the dial-up is used or not on the basis of a failed connection.

Objections

Claims 14, 33, and 39 have been objected to for inclusion of "modern" instead of "modem." This is the result of a typographical error when reproducing the claim listing in the previous response and this typographical error has been removed from the claim listing above.

103 Rejections

Claims 1-6, 8-11, 13-23, 33-36, and 38-45 stand rejected under 35 USC 103(a) as being unpatentable over Bransen (US Pat 6,314,512) in view of Hibbard (US Pat App

2001/0056503), in further view of the Tsoft publication, and in further view of Thurlow (US Pat 6,457,879). Claims 7, 12, 21, 37, and 45 stand rejected as being unpatentable over Branson, in view of Hibbard, in further view of Tsoft, in further view of Thurlow, and in further view of one of various other references. Claims 24 and 26-31 stand rejected under 35 USC 103(a) as being unpatentable over Hibbard in view of the Tsoft. Claim 32 is rejected as being unpatentable over Hibbard in view of Tsoft in further view of Donahue (US Pat 5,835,721). Applicants respectfully traverse these rejections.

Claims 1-23 and 33-45

The Office Action has rejected independent claims 1, 15, 33, and 39 by stating that Bransen discloses a method monitoring Internet access, detecting a failure, and notifying the end user. The Office Action further states that Hibbard discloses pinging a network to detect a failed connection and employing a back-up dial-up connection when the connection has failed. The Action further states that Tsoft teaches an xDSL primary connection and a dial-up connection as a back-up. The Action further states that Thurlow discloses prompting the user to switch connections. It is stated that it would be obvious to combine these references to render claims 1, 15, 33, and 39 unpatentable. Applicants respectfully traverse these rejections.

Each of these claims includes recitations not disclosed by the cited combination of references. As a representative example, claim 1 recites sending a request from a user computer via xDSL service to which a response is expected, the user computer being connected via the xDSL service to a network to which the request is sent, determining if a response has been received, and if no response has been received, displaying a message on the user computer indicating that xDSL is out of service and displaying a message prompting the user to select whether to connect to the network via a dial-up modem.

The current rejection relies on Thurlow to provide for the prompting of the user as to whether to use the back-up dial-up account. However, Thurlow does not prompt for user input on the basis of having detected a non-responsive primary connection. Thurlow prompts only while the primary connection remains active, and it is therefore inherent in the prompting of Thurlow that the user is choosing to affirmatively terminate the active

primary connection in favor of establishing an active secondary connection. Therefore, Thurlow is inadequate relative to the elements of the claims that involve prompting the use on the basis of a non-responsive xDSL connection. For this reason alone, these claims are allowable over the cited references.

The current rejection relies on Hibbard to provide for the back-up dial-up connection that is employed upon the primary connection having failed. However, it is a primary goal of Hibbard to provide an automatic switch from the failed primary connection to the back-up dial-up connection to prevent unnecessary downtime (see [0007]) that might otherwise result, such as if the time was taken to prompt the user and wait for a response. Therefore, employing the Hibbard back-up dial-up mechanism results in an automatic use of the dial-up connection that does not allow for a user to intervene via a prompt to prevent the dial-up connection from being established. Therefore, Hibbard teaches away from the proposed combination, and the inclusion of Hibbard does not allow for the user to be prompted on the basis of a failed primary prior to establishing the secondary. For this reason alone, these claims are also allowable over the cited references.

Claims 24 and 26-32

The Office Action rejected claim 24 by stating that Bransen, Hibbard, and Tsoft together teach all of the elements. Amended claim 24 recites, among other things, monitoring by the service provider the connection via dial-up modem and determining the user's account information including whether the user is an xDSL service subscriber or customer and upon detecting the dial-up connection to the server and determining that the user is an xDSL service subscriber or customer, concluding by the service provider that xDSL service has failed and issuing by the service provider a trouble ticket requesting repair of the xDSL service.

None of the cited references disclose the service provider concluding that the xDSL has failed and issuing a trouble ticket requesting repair based upon detecting the dial-up connection from the end user.

The Office Action has relied upon the disclosure of Hibbard for the service provider concluding that xDSL service is down and generating a trouble tickets.

However, Hibbard discloses that the network administrator is made aware of the connection failure upon the dial-up connection being made, but does not disclose that the service provider is monitoring the dial-up connection in order to conclude that xDSL has failed in order to issue a trouble ticket for repair. The network administrator must make contact with the service provider to request repair of the main connection. It cannot be said that the service provider in Hibbard knows to conclude that xDSL is down and generate a trouble ticket on the basis of detecting the dial-up connection to the server without some explicit teaching of such. To state that the service provider of Hibbard would be able to conclude such requires one to apply impermissible hindsight based on the disclosure of the present application as there is no such disclosure within Hibbard.

Accordingly, the combination of cited references fails to singly or in combination disclose all of the elements of claim 24. Therefore, claim 24 is allowable over the cited combination for at least these reasons. Dependent claims 26-32 depend from an allowable claim 24 and are also allowable for at least the same reasons.

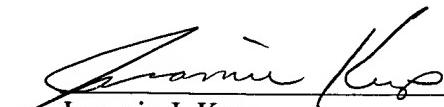
Conclusion

Applicants assert that the application including claims 1-24 and 26-45 is now in condition for allowance. Applicants request reconsideration in view of the amendments and remarks above and further request that a Notice of Allowability be provided. Should the Examiner have any questions, please contact the undersigned.

No fees are believed due. However, please charge any additional fees or credit any overpayment to Deposit Account No. 50-3025.

Respectfully submitted,

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